

ORAL ARGUMENT NOT YET SCHEDULED
No. 22-5105

**United States Court of Appeals
for the District of Columbia Circuit**

**WOODHULL FREEDOM FOUNDATION, HUMAN RIGHTS WATCH,
ERIC KOSZYK, JESSE MALEY a/k/a ALEX ANDREWS and THE
INTERNET ARCHIVE,**

Appellants,

v.

**THE UNITED STATES OF AMERICA
AND MERRICK B. GARLAND, IN HIS OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF THE UNITED STATES,**

Appellees.

From an Order by the U.S. District Court for the District of Columbia
The Honorable Richard J. Leon, Judge Presiding (Case No. 1:18-cv-1552-RJL)

MOTION TO PARTICIPATE AS AMICUS CURIAE IN SUPPORT OF APPELLANTS

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CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

Pursuant to D.C. Circuit R. 28(a)(1), amici curiae Decriminalize Sex Work, The Sex Workers Project of the Urban Justice Center, Freedom Network, Brooklyn Defender Services, The Erotic Laborers Alliance of New England, Old Pros, National Coalition for Sexual Freedom, New York Transgender Advocacy Group, Free Speech Coalition, Sex Workers Outreach Project Brooklyn, GLITS, and St. James Infirmary certify the following:

A. Parties and *Amici*

Woodhull Freedom Foundation, Human Rights Watch, Eric Koszyk, Jesse Maley, a/k/a Alex Andrews, and The Internet Archive, Plaintiffs below, Appellants here, filed suit challenging the constitutionality of the Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115-164, 132 Stat. 1253 (2018) (“FOSTA”), naming as Defendants, Appellees here, the United States and the Attorney General of the United States in his official capacity. The amici here anticipate that four other amicus curiae briefs will be filed: (1) the Center for Democracy and Technology; (2) Coyote–Rhode Island; (3) Foundation for Individual Rights and Expression, and other entities aligned with its position; and (4) the Transgender Law Center. Amici here are unaware of any other parties or *amici* at this time.

B. Rulings Under Review

The ruling under review is *Woodhull Freedom Foundation, et al. v. United States*, 2022 WL 910600 (D.D.C. Mar. 29, 2022), and its accompanying Order, by which the District Court granted Appellees' motion for summary judgment and denied Appellants' motion for summary judgment, dismissing Appellants' Complaint challenging the constitutionality of FOSTA.

C. Related Cases

There are no related cases.

STATEMENT OF NEED FOR SEPARATE BRIEFS

Amici here are several organizations with expertise in state and federal policies affecting adult consensual sex workers and survivors of human trafficking. This brief details a historical perspective of misguided trafficking policies that conflate sex work with trafficking in persons to the detriment of both sex workers and trafficking survivors. It also reflects on policy and advocacy efforts and the way they have been limited by online censorship in the wake of FOSTA's passage.

A single joint amicus brief is not practicable here because COYOTE-RI's brief addresses the harms of FOSTA from the perspective of directly affected sex workers in their community using quantitative data. While the briefs may reference similar and sometimes identical authorities, this brief instead uses qualitative

evidence to provide a bird's-eye perspective on the motivations behind and impacts of FOSTA.

Each brief approaches the same issues from different perspectives.

COYOTE's focuses on the harmful effect of FOSTA on the ability for sex workers to engage in erotic labor safely and to access necessary social support systems, while this brief instead frames the issues in the historical and political context of the conflation between sex work and human trafficking and examines the larger causes of these harmful policies. Separate briefs are necessary to illustrate the wide breadth of FOSTA's harms to various communities and inform the court of the various underpinnings of trafficking policy that don't fall into the scope of appellants' argument.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and D.C. Cir. R. 26.1, amici represent that no party to this brief is a publicly held corporation, issues stock, or has a parent corporation.

STATUTES AND REGULATIONS

Applicable statutes are contained in the Brief for Appellants.

SOURCE OF AUTHORITY TO FILE

Amici submit that Both Appellants and Appellees have consented to the filing of this amicus brief and thus it is permitted under Fed. R. App. P. 29(a)(2).

STATEMENT OF AUTHORSHIP AND FINANCIAL CONTRIBUTIONS

No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund the brief's preparation or submission; and no person other than amici contributed money intended to fund the brief's preparation or submission.

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INTEREST OF AMICI CURIAE

Amici curiae consist of 12 organizations with varying, interrelated interests in the present case. Amici work within any number of realms to achieve the same goal: safety, health, wellbeing, and human rights for sex workers and survivors of human trafficking. Amici are activists, advocates, organizers, service providers, policy experts, or a combination of any of the above. Amici have all seen their work affected by the consequences of the Fighting Online Sex Trafficking Act [hereinafter referred to as FOSTA] and the Stop Enabling Sex Trafficking Act [hereinafter referred to as SESTA, although for brevity, the brief will reference FOSTA to encompass both]. Amici have had their online presence censored, have had to limit information-sharing vital to their work, and have provided support to populations who have been censored or have self-censored. Being experts in policies surrounding both adult consensual adult sex work and human trafficking, amici are in a unique position to shine light on the law's failure to differentiate between the two and the harms caused by conflation of the issues.

An amicus brief is desirable here because appellants' argument necessarily does not represent the breadth of the issues caused by the challenged policy nor its context. The matters asserted are relevant to the present case because they speak to harms suffered by communities other than those experienced by appellants and demonstrate the unconstitutional provisions of the law on a broader scale.

LIST OF AMICI CURIAE

Decriminalize Sex Work (DSW) is a national organization using a state-by-state strategy to advance policies related to the decriminalization of adult consensual sex work. DSW was founded in 2018 in direct response to FOSTA. DSW's staff are multidisciplinary seasoned advocates and experts in the areas of sex work, human trafficking, and the consequences of criminalization. The organization has successfully introduced and passed legislation to protect the human rights of sex workers, including immunity laws that protect victims of crime from being prosecuted for prostitution, the repeal of harmful loitering for prostitution laws, and expanded criminal record relief for survivors of trafficking.

The Sex Workers Project (SWP) of the Urban Justice Center is a national organization that defends the human rights of sex workers by destigmatizing and decriminalizing people in the sex trades through free legal services, education, research, and policy advocacy. As both a direct service provider and advocacy organization, SWP understands the negative consequences of SESTA/FOSTA on individual people involved in the sex trades and on efforts to reduce systemic harms and improve laws that effect sex workers and survivors of human trafficking.

Freedom Network is dedicated to a human rights-based approach to human trafficking. Protecting the rights of each survivor is the only path to restoring their dignity and the opportunity for a better life. This commitment to human rights ties the network together as it works toward the common goal of ending human trafficking.

Brooklyn Defender Services (BDS) is one of the largest public defense offices in New York State and has been a pioneering force in developing practices in New York City's Human Trafficking Intervention Courts, where many sex workers and survivors of trafficking have their cases heard. BDS works, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality.

The *Erotic Laborers Alliance Of New England (ELA-ONE)* is a grassroots harm reduction organization that supports trans folx who have been directly impacted by FOSTA. As a peer-led group, ELA-ONE has experienced censorship, shadow banning, and conflation in online efforts as a harm reduction organization as a result of FOSTA, creating an environment where outreach efforts are obstructed. ELA-ONE has unfortunately witnessed firsthand the impact of this damaging legislation and the way outreach efforts have been obstructed. Further, some of the

organization's most marginalized community members have been pressured into unsafe working conditions due to FOSTA.

Old Pros is a nonprofit media organization focused on creating the conditions to change the status of sex workers in society through storytelling. Old Pros produces a podcast about sex worker history and a newsletter about sex worker rights related news. The mission is to change cultural narratives around sex work, setting the stage for policy reforms that will destigmatize sex work and ensure sex workers have access to all the tools they need to thrive.

National Coalition for Sexual Freedom (NCSF) is the advocacy organization for consenting adults who engage in kink and consensual non-monogamy. NCSF has received reports from our constituent groups and licensed professionals that under FOSTA/SESTA, they have been deplatformed from social media, their books and videos have been delisted from search functions, and they're not allowed to advertise their clinical services or events on social media.

New York Transgender Advocacy Group (NYTAG) is a non-profit organization that centers the TGNCNBI community. NYTAG stands with those who are sex-workers and have been impacted by FOSTA.

Free Speech Coalition (FSC) is the trade and advocacy organization for the adult industry. In the wake of the passage of FOSTA, FSC witnessed rapid and widespread removal of workers and businesses from social media, the shuttering of online resources for health and safety, and the denial of basic services from mainstream internet platforms. FOSTA has had a massive chilling effect that has harmed businesses and made workers less safe.

SWOP (Sex Workers Outreach Project) Brooklyn was founded in October 2019 with the mission to build community and provide mutual aid to sex workers in Brooklyn. SWOP Brooklyn is a 100% volunteer-run peer-led organization dedicated to supporting New York sex workers in need and has seen firsthand the harmful impact of FOSTA on its members

G.L.I.T.S. (Gays and Lesbians Living in a Transgender Society) builds future trans community leaders, public education, sex worker rights advocacy - and in collaboration with allies - policy solutions. G.L.I.T.S. addresses the stigmatization and criminalization of trans people and the laws that perpetuate it.

St. James Infirmary is a peer-based non-profit organization serving sex workers throughout the San Francisco Bay Area and is the first occupational health and

safety clinic in the U.S. run by sex workers, for sex workers. St. James Infirmary provides free, compassionate, and nonjudgmental healthcare, social services, and community support for current or former sex workers of all genders and sexual orientations while preventing occupational illnesses and injuries through a comprehensive continuum of services.